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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,444	02/27/2004	David Shaver	48550/P003US/10309896	5009

29053 7590 08/23/2006

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ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 08/23/2006

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/789,444
Filing Date: February 27, 2004
Appellant(s): SHAVER ET AL.

Michael Papalas
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/5/06 appealing from the Office action mailed 1/3/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Ennis, Keith. "The Hop Picking Year",

http://www.bygonebodiam.co.uk/Hop_Training.htm

FR2797559A1 GAUDRU 2-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3,4,6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by The Hop Picking Year article (herein Hop) dated summer 1961 from http://www.bygonebodiam.co.uk/Hop%20Training.htm.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2,5,10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hop (as above) in view of Gaudru (FR2797559A1).

(10) Response to Argument

Appellant argued that The Hop Picking Year article is not prior art under 102(b) because the Internet date was posted after Appellant's filing date. In addition, the Examiner has not shown that the article is a printed publication.

Although the Hop Picking article is dated 5/9/04 (WaybackMachine), it is still a 102(b) publication because the article discussed about the Guinness Time, which is a newspaper dating back to 1958. The Guinness Time is a publicly posted publication in 1958, therefore, it is prior art under 102(b). The Hop Picking article merely summarizes what has already been published in the Guinness Time newspaper in 1958, thus, priority date should date back to 1958. The date (1958) of the newspaper when first printed is the date of filing and was publicly posted, which definitely is before the filling date of Appellant's invention.

The Guinness Time is a printed publication or newspaper, therefore, the newspaper is a public document. Just because Appellant cannot get the newspaper from Ireland does not mean that the newspaper is not a printed publication and made public. For example, if one was to go and find Time magazine dating back from the first issue, it would probably be hard because it might be in a museum or the like for historical value. However, it does not mean that the Time magazine, first issue, is not a printed publication because when it first came out, it was made public then. Since time elapse and historical value increases, the public cannot access it readily now as before but it doesn't mean that it is not a printed publication. Apparently, Mr. Keith Ennis, who is a mere average "joe" interested in hop growing, was able to obtain the newspaper dating back to 1958; therefore, the newspaper was made publicly for Mr. Ennis. The

Internet site of Mr. Ennis clearly shows clipping from the Guiness Time, which is substantive evidence enough to demonstrate that the Guiness Time is a legitimate newspaper and was made public.

Appellant argued that the Examiner has neither identified what claims of the invention that the Tillinghast reference allegedly anticipates nor has the Examiner provided reasons for maintaining that an anticipation rejection is proper.

The Examiner cited Tillinghast for Appellant to demonstrate that Appellant's invention is not patentable because, in addition to the Hop article, Tillinghast also teaches the method of growing plant as claimed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Son T. Nguyen

Conferees:

Peter Poon

Robert Swiatek